

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Petition of Leap Wireless
International for Emergency
Assignment of NXX Codes)

CC Dkt No. 99-200

**PETITION OF LEAP WIRELESS INTERNATIONAL FOR EMERGENCY
ASSIGNMENT OF NXX CODES**

Leap Wireless International, Inc., on behalf of itself and its affiliated entities (collectively, "Leap"), hereby requests two additional NXX codes in the 716 area code, in the Buffalo, New York rate center. Leap submits this request in accordance with the Commission's "safety valve" procedures, set forth in the Numbering Resource Optimization *Third Report and Order*.¹ Because of its extraordinary growth rate, Leap will run out of phone numbers with which it can activate subscribers in Buffalo on June 19, 2002. Leap applied to receive additional numbers from the New York Public Service Commission ("PSC"). Despite the PSC's great cooperation with Leap on previous occasions, that body has now stated that it cannot act on Leap's request until May – less than a month before Leap expects to run out of numbers – so that

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¹ Numbering Resource Optimization, *Third Report and Order and Second Order on Reconsideration*, CC Dkt Nos. 99-200 et al., FCC 01-362 (rel. Dec. 28, 2001) ("*Third Report and Order*").

relief would come too late.² Therefore, because New York PSC will not reach a decision “within a reasonable time frame,”³ Leap hereby submits this request to the Commission for resolution.

I. LEAP NEEDS PHONE NUMBERS IN BUFFALO

A. Leap Needs Phone Numbers

The Commission is familiar with Leap’s innovative wireless service, sold under the brand name Cricket. Cricket offers low-cost, flat-rated wireless service that is geared towards the mass market: roughly \$30 a month for all-you-can-talk, unlimited wireless minutes on an all-digital, state-of-the-art CDMA network. Cricket’s extraordinary value and the simplicity of its service offering has great appeal to the roughly 65 percent of Americans who do not subscribe to more traditional carriers – those who are left behind by the costly and complicated service offerings that generally prevail among those larger carriers.

As a result, Leap experiences extraordinarily high growth rates whenever it enters a new market – rates that are orders of magnitude higher than those of traditional carriers. And Leap’s extraordinarily high subscriber growth rate leads it to experience an extraordinarily high demand for phone numbers to assign to those subscribers.⁴

Most recently, Leap launched service in Buffalo, New York, in the 716 area code. When Leap launched service in Buffalo on February 7th, 2002, it had a total of three 10,000-blocks of phone numbers: one NXX code assigned to the Buffalo rate center, one assigned to the Williamsville rate center and one assigned to the Niagara Falls rate center. Of

² Even once new codes are allocated to Leap, it will take an additional 66 days for them to become LERG effective.

³ *Id.* ¶ 66.

⁴ Leap has applied to the Commission for relief on previous occasions. See Leap Wireless International, Inc. Request for Waiver of Numbering Resource Utilization Threshold Requirement of Commission Rule 52.15(h), filed July 17, 2001; Leap Wireless International, Inc. Request for Emergency Assignment of Three NXX Codes in the 412 NPA and Request for Confidentiality, filed July 27, 2001; Letter from Jeffrey J. Carlisle, Senior Deputy Chief, Common Carrier Bureau to William S. Carnell, Latham & Watkins, released September 17, 2001 (DA 01-2164).

these, codes in the Buffalo rate center are by far in the greatest demand. Leap subsequently petitioned for and received from the New York Public Service Commission an emergency allocation of two additional codes in the Buffalo rate center. These became LERG-effective on March 6, 2002. However, all of those numbers are rapidly being used up. As of March 9th – just one month after launch – 16,834 numbers had been assigned out of the 40,000 available in Buffalo and Williamsville.⁵

While Leap expects this “run rate” to slow down somewhat, nevertheless it expects the run rate generally to range between 1,200 and 1,500 per week for the next several months, with peak periods above this range.⁶ These weekly projected run rates take into account Cricket’s historical run rate in these markets, as well as its run rate in similar markets. The variation among weeks is due primarily to varying marketing activities, including the launch of advertising campaigns and special promotions, and also accounts for seasonal fluctuations. Based upon these projections – which predict run rates somewhat below the actual rate that Leap has experienced in this market – Leap believes that it will run out of phone numbers that it can use to activate new subscribers in Buffalo by June 19.⁷

⁵ Growth has not been as rapid in Niagara Falls because of the landline telephone rate structure which makes calls between Niagara Falls and Buffalo toll calls. This fact also precludes the assignment of the Niagara Falls numbers to customers in Buffalo, where the demand is the greatest.

⁶ This number is based upon actual experience through February 27th, with a projection for sales on the 28th of February and the 1st of March.

⁷ This represents the date on which Leap will exhaust its numbers in the Buffalo and Williamsville rate centers. Because the Williamsville rate center provides a calling area substantially similar to the Buffalo calling area, Leap has used Williamsville codes to activate Buffalo subscribers, even though this arrangement is not ideal.

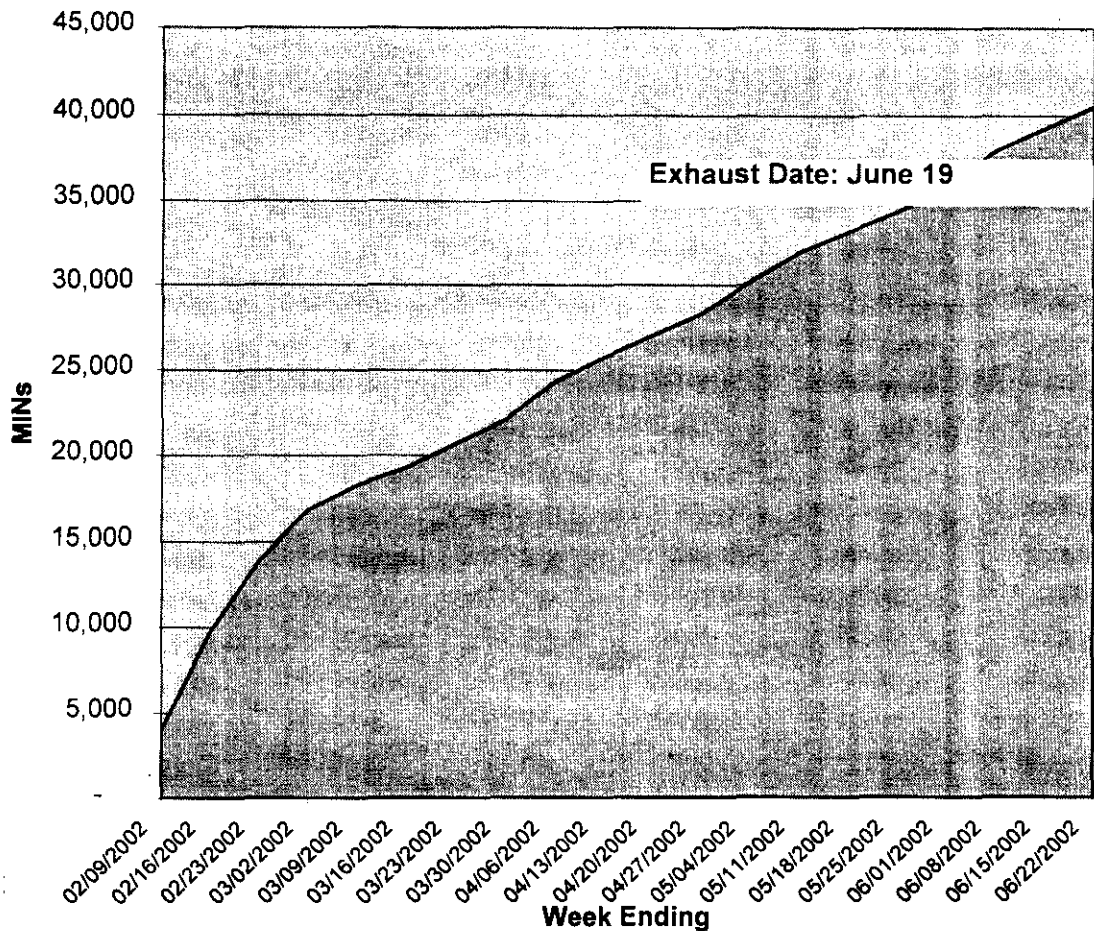
Leap's actual and projected sales (and thus number utilization) are set forth below.⁸

Weekly Run Rate: Buffalo and Williamsville rate centers

Week Ended	Customer Assigned Mins	Projected MINs	Total	Cumulative MINs
09-Feb	3,987		3,987	3,987
16-Feb	5,697		5,697	9,684
23-Feb	4,235		4,235	13,919
02-Mar	2,916		2,916	16,834
09-Mar	1,465		1,465	18,300
16-Mar	1,018		1,018	19,318
23-Mar		1,394	1,394	20,712
30-Mar		1,394	1,394	22,107
06-Apr		2,170	2,170	24,277
13-Apr		1,445	1,445	25,722
20-Apr		1,303	1,303	27,025
27-Apr		1,303	1,303	28,328
04-May		1,872	1,872	30,200
11-May		1,699	1,699	31,899
18-May		1,248	1,248	33,147
25-May		1,248	1,248	34,396
01-Jun		1,398	1,398	35,794
08-Jun		2,157	2,157	37,951
15-Jun		1,303	1,303	39,254
22-Jun		1,303	1,303	40,557
Total	19,318	21,239	40,557	

⁸ These charts are based on data provided by Leap.

**Buffalo and Williamsville Rate Centers:
Actual and Projected Subscriber Growth**



As these charts illustrate, Leap faces imminent exhaustion of telephone numbers. In fewer than 90 days, Leap will run out of numbers, and absent Commission intervention Leap may be forced to cease offering service to the public.

B. New York Has Failed to Provide Sufficient Phone Numbers

The New York Department of Public Services rations phone numbers in the Buffalo NPA. Leap has therefore been severely hampered in its ability to obtain sufficient phone numbers there. When Leap recently determined that it faced imminent number exhaust, it filed a

petition for an emergency allocation of phone numbers with the New York PSC in accordance with the Commission's Safety Valve procedures, and sought expedited treatment. New York PSC refused Leap's request for expedited treatment, and has informed Leap that it will not even consider Leap's request until May.⁹ But even if New York allocates additional numbers to Leap in May, those numbers will not become LERG effective (and thus usable by subscribers) until 66 days later – mid-July – and after the Leap runs out of numbers.

II. THE SAFETY VALVE APPLIES HERE TO ENTITLE LEAP TO THOSE NECESSARY PHONE NUMBERS

The Commission has directed that a carrier be awarded additional numbering resources in a market where the carrier demonstrates that it “will exhaust its numbering resources in a market or rate area within three months,” based on projections grounded in actual experience.¹⁰ There can be no doubt that Leap meets this test: as shown, Leap's projections, which are based upon its actual growth rate in the Buffalo market, show that Leap will completely exhaust its existing numbering resources by June 19, 2002. Therefore, there can be no doubt that Leap should be awarded additional numbering resources in accordance with the Commission's safety valve.

Moreover, it is plain that the Commission should act in this case to ensure that Leap receives the numbers it requires. Though the Commission has directed states to act on carrier safety valve requests “as expeditiously as possible,” and “in most instances [within] 10 business days,” New York PSC has stated that it will not act on Leap's request until May – not in time to prevent Leap from running out of phone numbers. Therefore, in accordance with the *Third Report and Order*, the Commission should resolve Leap's request. Because the New York

⁹ The New York PSC explains that, while sympathetic to Leap's request, it is barred from such expedited consideration by the requirements of the New York state Administrative Procedures Act.

PSC is unable to allocate additional numbering resources in a timely manner, the Commission should do so.¹¹

III. CONCLUSION

Leap is a victim of its own popularity: because it experiences such astonishing subscriber growth, it is in desperate need of additional phone numbers to give to those subscribers. Yet despite its sympathy and previous cooperation, the New York PSC cannot provide those numbers in time. This is the precise situation that the Commission sought to remedy when it implemented the “safety valve” in its Third Report and Order. The Commission should apply the safety valve in this case, and should direct NANPA to allocate two additional codes to Leap.

Respectfully Submitted,

LEAP WIRELESS INTERNATIONAL, INC.

James H. Barker
William S. Carnell
LATHAM & WATKINS
555 11th Street NW
Suite 1000
Washington, D.C. 20004
(202) 637-2200

Its attorneys

April 4, 2002

¹⁰ *Third Report and Order* ¶63.

¹¹ *Id.* ¶ 66.